IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.575 of 2005
TO
FIRST APPEAL No.598 of 2005
WITH
CROSS OBJECTION No.42 of 2005
To
CROSS OBJECTION No.63 of 2005
WITH
CROSS OBJECTION Nos.27 & 35 of 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE J. M. PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL. LAQ OFFICER & ANOTHER - Appellants
Versus
JATUBHA MURUBHA CHAUHAN & OTHERS - Respondents

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Appearance :
MR SS SHAH, GP for Appellants in First Appeal Nos.575 of 2005 to 586 of 2005 and Cross-Objections Nos.42 of 53 of 2005.
AND
MS MINI NAIR, AGP for Appellants in First Appeal Nos.587 of 2005 to 598 of 2005 & Cross-Objection Nos.54 to 63 of 2005, 27 & 35 of 2007.
MR SUNIL K SHAH for Original Claimants in all First Appeals & X-Objections.

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CORAM : HONOURABLE MR. JUSTICE J. M. PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date: 08/05/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

What is challenged in the above numbered appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated February 27, 2002 rendered by the learned 2nd Extra Assistant Judge & Special Judge (LAR), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.731 of 1995 to 754 of 1995 by which the claimants have been awarded additional amount of compensation at the rate of Rs.77.90 Paise per square metre for their acquired lands over and above the compensation offered to them at the rate of Rs.5.10 Paise per square metre by award dated February 11, 1994 made by the Special Land Acquisition Officer under Section 11 of the Act.

The claimants by filing Cross Objections claim that they should have been awarded interest from

the date on which possession of the lands acquired was taken and not from the date of publication of notification issued under Section 4 of the Act and that they should also have been awarded interest on the amount awarded under Section 23(1-A) of the Act

2. The Executive Engineer, Narmada Project, Main Canal, Construction Division No.3/2, Gandhinagar, proposed to the State Government to acquire lands of Village: Sanathal, Taluka: Sanand, District: Ahmedabad for the public purpose of construction of Dholka Branch Canal under Sardar Sarovar Project. On perusal of the same, the State Government was satisfied that the lands of Village: Sanathal mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on November 16, 1991. Thereafter, necessary inquiry was conducted under Section 5A of the Act after which a report was submitted by the Special Land Acquisition

Officer to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Village: Sanathal specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Dholka Branch Canal under Sardar Sarovar Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on May 14, 1992. The interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100=00 per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.5.10 Paise per square metre by award dated February 11, 1994. The claimants were of the opinion that the offer of compensation made to them was totally

inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were numbered as Land Acquisition Case Nos.731 of 1995 to 754 of 1995.

3. On behalf of the claimants, witness Mr.Babubhai Bhupatsang was examined at Exhibit 49. The witness stated before the Court that the lands acquired were even and fertile lands and as irrigation facilities were available, each claimant was able to raise crops such as; paddy, wheat, groundnut, cumin-seeds, vegetables, etc. in a year. The witness further asserted that each claimant was able to earn net income of Rs.45,000=00 per year per *vigha* from the sale of agricultural produces. The witness maintained before the Court that the boundaries of Village:

Shela, Village: Telav, Village: Kolat, Village: Navapura, Village: Sarkhej, Village: Akob, and Village: Fatehpura were touching the boundaries of Village: Sanathal. According to this witness, Village: Sanathal was within the limits of Ahmedabad Urban Development Authority. The witness stated that Village: Sanathal was situated at a distance of 6 Kilometres from Sanand Town, which was the centre of Taluka whereas it was situated at a distance of 1 Kilometre away from Sarkhej Cross Roads. The witness further stated that Ahmedabad-Bavla and Sanand-Viramgam Highways were situated just near Village: Sanathal and Telav-Sanand Road was also passing near Village: Sanathal. The witness asserted that the lands acquired in the instant cases were touching Ahmedabad-Sarkhej-Bavla Highway as well as Ahmedabad-Viramgam Highway. The witness informed the Court that Village: Sanathal was fully developed and facilities such as; banks, cooperative societies, telephone, railway station, dispensaries, private hospitals, S.T.Bus, etc. were available in the

village. According to this witness, Eklavya High School as well as several farms were located in Village: Sanathal and that the lands were plotted for the purpose of construction of residential societies. In support of the assertion made by him, the witness produced necessary certificate issued by Talati-cum-Mantri at Exhibit 44. The witness further stated that Dholka Branch Canal was coming from Village: Garodiya and going to Village: Godhavi from which it was passing through Village: Telav and reaching his Village: Sanathal. The witness mentioned that the lands of Village: Shela were adjoining to the lands acquired in the instant cases and that lands of Village: Sanathal were far better in quality than the lands of Village: Shela. According to this witness, the lands from Village: Shela were also acquired for the purpose of construction of canal regarding which an award was rendered by the Reference Court. The witness produced a copy of the previous award of the Reference Court relating to the lands of Village: Shela at Exhibit 45. The

witness further stated that Village: Ghuma was situated at a distance of 2 Kilometres away and produced previous award of the Reference Court relating to the lands of Village: Ghuma at Exhibit 46.

This witness was cross examined by the learned counsel for the Acquiring Authorities. In his cross-examination, the witness mentioned that he was not knowing about sale transactions, which had taken place in the last five years nor was he knowing about correct prices of the lands prevailing in his village. The witness further stated that Village: Telav was situated at a distance of ½ Kilometre away from his village and that no documentary evidence was produced by the claimants before the Special Land Acquisition Officer in support of their claim for compensation.

4. On behalf of the Acquiring Authorities, witness Mr.Bharatbhai Viththalbhai Shah, who was then Deputy Executive Engineer at Sanand, was

examined at Exhibit 75. The witness mentioned in his testimony that before determining the market value of the lands acquired in the instant cases, the Special Land Acquisition Officer had taken into consideration all the relevant factors and, therefore, the claimants were not entitled to enhanced compensation. The witness stated that Village: Sanathal was situated at a distance of 14 Kilometres from Village: Bavla whereas Sarkhej Cross Roads were situated at a distance of 5 Kilometres from Village: Sanathal. The witness also stated that Village: Ghuma was situated at a distance of 25 Kilometres away from Village: Sanathal and that population of Village: Santhal was 5000. According this witness, no developments in Village: Sanathal had taken place nor the industries or the housing societies had come up in the said village. The witness mentioned that Village: Sanathal was situated on Bavla-Bagodara National Highway and that in comparison to Village: Ghuma and Village: Shela, the development of Village: Sanathal was negligible.

In cross-examination by the learned counsel for the claimants, this witness admitted that Dholka Branch Canal was coming from Village: Garodiya and was going to Village: Godhavi after which it was passing through Village: Telav and was going towards Village: Navapur. The witness stated that Bavla Highway and Sanand-Viramgam Higway were touching the *sim* of Village: Sanathal. The witness had to admit that he was not associated with the proceedings, which were initiated for acquiring the lands from Village: Sanathal nor had he any personal information regarding the sales of lands which were executed in Village: Sanathal. The witness also stated that the distances of different villages from Village: Sanathal were mentioned by him only on the basis of his guess.

5. After recording of the evidence was over, the learned advocate for the claimants, submitted a list of documents at Exhibit 67 and sought to produce six documents. A copy of the list was

served on the learned Government Pleader appearing for the Acquiring Authorities. He made an endorsement that he had no objections if document at Serial No.5 mentioned in list at Exhibit 67 was exhibited. However, the learned Judge passed an order "*Recorded*" below Exhibit 67. Thus, the previous award of the Reference Court relating to the lands of Village: Garodiya, Taluka: Sanand, District: Ahmedabad, was produced at Exhibit 68 whereas judgment of the High Court dated October 12, 2000 rendered in First Appeal Nos.1536 to 1551 of 2000 confirming the previous award of the Reference Court relating to the lands of Village: Garodiya, which was rendered in Land Acquisition Case No.1048 of 1996 and cognate matter was produced at Exhibit 69 and the previous award of the Reference Court relating to the lands of Village: Godhavi, Taluka: Sanand, District: Ahmedabad rendered in Land Acquisition Case No.170 of 1996 and cognate matters was produced at Exhibit 70 whereas judgment dated August 18, 2000 rendered by the Division Bench of the High

Court in First Appeal Nos.712 to 719 of 2000 and other cognate matters confirming the award of the Reference Court rendered in Land Reference Case Nos.170 to 179 of 1996 was produced at Exhibit 71.

6. On appreciation of the evidence adduced by the parties, the Reference Court held that there was distance between Village: Sanathal and Village: Shela and that between the lands acquired from Village: Sanathal and the lands acquired from Village: Shela, the lands acquired from Village: Telav were situated. The Reference Court concluded that between Village: Sanathal and Village: Telav, Sarkhej-Viramgam Highway was passing whereas two highways were touching Village: Sanathal. It was further found by the Reference Court that no industrial development had taken place in the area or surrounding lands, which were acquired from Village: Sanathal, but the farm-houses were situated within the revenue limits of Village: Sanathal. On consideration of the evidence adduced by the

parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Shela furnished better guidance for the purpose of determining market value of the lands acquired from Village: Sanathal and that other previous awards relating to the lands of Village: Godhavi, and/or Village: Garodiya, etc. were of little assistance in determining the market value of the lands acquired. After placing reliance on the previous award of the Reference Court relating to the lands of Village: Shela, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.77.90 Paise per square metre by the impugned award giving rise to the above numbered appeals and cross objections.

7. This Court has heard Ms.Mini Nair, learned Assistant Government Pleader, for the appellants, and Mr.Sunil K. Shah, learned counsel for the original claimant(s) in each appeal and X-Objection at length and in great

detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court as well as Record & Proceedings received from the Reference Court.

8. The contention that in view of considerable distance between the lands acquired from Village: Sanathal and the lands acquired from Village: Shela, the previous award of the Reference Court relating to the lands of Village: Shela should not have been relied upon by the Reference Court for the purpose of determining the market value of the lands acquired from Village: Sanathal, cannot be accepted. It is true that there was distance between the lands which were acquired from Village: Sanathal and the lands which were acquired from Village: Shela. However, the relevancy of the previous award of the Reference Court relating to the lands of Village: Shela stands firmly established by the testimony of

witness Babubhai Bhupatsang, who was examined on behalf of the claimants at Exhibit 49. It was asserted by this witness in his testimony that the lands of Village: Sanathal were adjoining to the lands of Village: Shela. What was claimed by the witness was that the lands of Village: Sanathal were far better in quality than the lands of Village: Shela. It was further mentioned by the witness that the boundaries of Village: Shela, Village: Telav, Village: Kolat, Village: Sarkhej, Village: Akob, Village: Fatehpura, were touching the boundaries of Village: Sanathal. The above referred to assertions made by the witness for the claimants could not be challenged by the Acquiring Authorities during his cross-examination. What is relevant to notice is that *sim* of Village: Sanathal was touching Bavla Highway as well as Sanand-Viramgam Highway. This fact is admitted by the witness examined on behalf of the Acquiring Authorities. Though it was mentioned by Mr.Bharatbhai Shah, who was examined by the Acquiring Authorities, that the crop-pattern in

Village: Sanathal was similar to that of other adjoining villages, it was stated by him that the prices of the lands were different. However, no evidence could be adduced by the said witness to substantiate his claim that though the crop-pattern was similar, the prices of the lands were differing from village to Village.

On appreciation of the evidence adduced before it, the Reference Court has made following pertinent observations in paragraph 31 of the impugned judgment:

> *Thus, the evidence on record indicates that the lands which were subject matter of previous awards of Shela, as discussed hereinabove, are in the vicinity and in reasonable proximity to the lands acquired in the present case, but certain points are on different footing. As observed earlier, a fertility and yield is also similar, but at the same time the advantage which the village Shela has got is also having same type of advantage to the village Sanathal because village Sanathal is touching to both the National Highway as well as main railway line is also in village Sanathal and therefore, there is some more development like societies and hospital, the value of the land of village Sanathal can be also put on the same footing and, therefore, in my opinion reliance can be placed on the award of the village Shela which is also*

> *based on the judgment of village Godhavi confirmed by the Hon'ble High Court. As discussed hereinabove, village Shela is just adjoining to the Surkhej-Viramgam Highway and also considering the fact that the boundaries of village Shela and Sanathal are touching to each other and in between the two village, National Highway is passing through and, therefore, in all these circumstances, I am of the opinion that it is required to place reliance on the previous award of village Shela for the purpose of determination of the market value of the land acquired in the present case."*

The learned Assistant Government Pleader could not point out to this Court as to how the findings recorded by the Reference Court in paragraph 31, which are quoted above, are erroneous.

9. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court in paragraph 31 of the judgment with which this Court fully concurs. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be relied upon for the purpose of determining

market value of similar lands acquired from the adjoining village. Under the circumstances, the plea that previous award of the Reference Court relating to the lands of Village: Shela should not have been relied upon for the purpose of determining the market value of the lands acquired from Village: Sanathal, has no substance and is hereby rejected.

10. The contention that no development had taken place in Village: Sanathal and, therefore, the previous award of the Reference Court relating to the lands of Village: Shela should not have been made the basis for the purpose of determining the market value of the lands acquired from Village: Sanathal, is devoid of merits. It may be stated that the evidence on record indicates that on two sides of Village: Sanathal, Highways were passing. Further, big farm houses, Eklavya School, etc. had already come up. Moreover, the lands from adjoining villages were already acquired for the public purposes. Thus, there is no manner of doubt that

the lands acquired from Village: Sanathal had potential value and could have been used either for industrial purpose or commercial purpose or residential purpose. Once the potentiality of the lands situated at Village: Sanathal is taken into consideration, the compensation awarded to the claimants at the rate of Rs.83/- per square metre on the basis of the previous award of the Reference Court relating to the lands of Village: Shela wherein the claimants were awarded compensation at the rate of Rs.85/- per square metre, cannot be considered to be on higher side so as to warrant interference of this Court in the present group of appeals.

11. It may be stated that though ample opportunity was afforded to the Acquiring Authorities to adduce the evidence to refute the claim made by the claimants, no evidence was led to establish that the claimants were not entitled to enhanced compensation on the basis of the previous award of the Reference Court relating to the lands of Village: Shela. Except producing indexes

indicating the instances of sale, which had taken place in the last five years, no evidence could be produced by the Acquiring Authorities to meet the case advanced by the claimants. Though the witness examined on behalf of the Acquiring Authorities stated that the relevant factors were taken into consideration by the Special Land Acquisition Officer before determining the market value of the lands acquired from Village: Sanathal, relevancy of the particulars mentioned in the indexes could not be stated or proved by the said witness.

12. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court to which well-settled principles of law have been applied. The lengthy judgment running into roughly 30 pages has dealt with each and every aspect of the matter and rightly determined the market value of the lands acquired from Village: Sanathal. The learned Assistant Government Pleader could not persuade

this Court to take a view different than the one taken by the Reference Court on appreciation of the evidence adduced before it. Therefore, the appeals, which lack merits, deserve to be dismissed.

13. Coming to the Cross Objections filed by the claimants, this Court finds that the claim made by the claimants that they should have been awarded interest from the date of taking over possession of the acquired lands, which is prior to the date of publication of notification issued under Section 4(1) of the Act cannot be accepted in view of the decision of the Supreme Court in ***R.L.Jain (D) by L.R. vs. D.D.A. & Ors., AIR 2004 SC 1904.***

However, the claim advanced by the claimants in their Cross-Objections that they should have been awarded interest on the amount found payable under Section 23(1-A) of the Act deserves to be upheld in view of the decision rendered in ***Sunder vs. Union of India, 2001 (3)***

G.L.H. 446 wherein the Supreme Court has held that the person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium. Therefore, the Cross-Objections filed by the claimants will have to be accepted in part.

14. For the foregoing reasons, all the appeals fail and are dismissed. The Cross Objections filed by the claimants are accepted in part and it is held that the claimants would be entitled to get interest on the aggregate amount including the amount awarded under Section 23(1-A) of the Act. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra